

**STATEMENT OF THE HONORABLE JACK ADING
ON BEHALF OF THE ENEWETAK PEOPLE
BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC
AND THE GLOBAL ENVIRONMENT
U. S. HOUSE OF REPRESENTATIVES**

May 20, 2010

**Submitted by the Honorable Jack Ading
Minister of Finance, Republic of the Marshall Islands;
Elected Representative of the Enewetak people
to the Nitijela (Parliament) of the Republic of the Marshall Islands**

Mr. Chairman and distinguished members of this Subcommittee:

On behalf of the Enewetak people, I thank you for providing me with an opportunity to describe to you and to members of this committee the challenges facing my people who are the only people ever resettled on a nuclear test site.

In this statement, I describe what we, the Enewetak people, experienced, and continue to experience, as a result of use of our land for nuclear testing by the United States. And, I hope to describe what needs to be done so that we have an opportunity to once again be self-reliant and self-sufficient.

In addition, we intend to mention other issues, some addressed by the Compact, others which need to be addressed by the U.S. whether in the Compact or otherwise. These issues relate to our ability to live on Enewetak and include: funding of a health care program, monitoring of our people for radiation exposure, continued and increased funding of the Enewetak Food and Agriculture Program, and monitoring of the U.S. created radiation waste site known as the Runit Dome.

Enewetak Atoll as a Nuclear Test Site

As you know, our ancestral homeland, Enewetak Atoll, was the site of forty-three of the sixty-six nuclear tests conducted by the United States in the Marshall Islands between 1946 and 1958. One of the tests at Enewetak was especially significant as it was the first test of a hydrogen bomb. This test occurred on October 31, 1952 and was known as the "Mike" test. The test had a yield of 10.4 megatons (750 times greater than the Hiroshima bomb). The destructive power of the Mike test was exceeded only by the Bravo test (15 megatons) in all the nuclear tests conducted by the United States anywhere. The Mike test vaporized an island, leaving a crater a mile in diameter and 200 feet deep. The Mike test detonation and the detonation of the other 42 nuclear devices on our land resulted in the vaporization of over 8% of our land and otherwise devastated our atoll. The devastation is so severe that to this day, fifty-two years after the last nuclear explosion, over half of our land and all of the lagoon remain contaminated by radiation. The damage is so pervasive that we cannot live on over 50% of our land. In fact, we can't even live on any part of our land without the importation of food.

How was it that the most powerful country on earth used our land for its nuclear weapons tests? Well, the United States had full control over the Marshall Islands after World War II, and it decided that Enewetak Atoll would be a more suitable test site than Bikini Atoll. There was a

problem, however; we lived on that land and we owned that land. In fact, it was the only land we ever owned. Generations after generations of our ancestors worked the land, planted food crops, built homes, and otherwise made the land productive. So, how could we be removed?

The United States removed us from our homeland because it had the power to do so. But, the U.S. recognized that we had rights and it had responsibilities and obligations to us as a result of that removal.

These rights, responsibilities and obligations were described in the memorandum attached to the Directive of President Harry Truman providing for our removal from our land. President Truman's Directive to the Secretary of Defense, dated November 25, 1947, reads as follows:

Dear Mr. Secretary:

You are hereby directed to effect the evacuation of the natives of Eniwetok Atoll preliminary to the carrying out of tests of atomic weapons early in 1948, and in accordance with the enclosed memorandum addressed to me by the Chairman of the Atomic Energy Commission.

Sincerely yours,

HARRY S. TRUMAN

The memorandum attached to President Truman's Directive described the rights we had and the responsibilities and obligations assumed by the United States. The memorandum reads in relevant part as follows:

- 1. They will be accorded all rights which are the normal constitutional rights of the citizens under the Constitution, but will be dealt with as wards of the United States for whom this country has special responsibilities.*
- 2. The displacement of local inhabitants will be kept to a minimum required for their own safety and well being and will not be accomplished merely for considerations of convenience.*
- 3. The displacement of local inhabitants will be effected by agreements reached with them regarding resettlement, including fully adequate provisions for their well being in their new locations.*

The Atomic Energy Commission and the Secretary of Defense will undertake to supply to the State Department evidence sufficient to demonstrate in an international forum that in conducting such experimentation in Eniwetok, the United States is not thereby subjecting the local inhabitants of the Trust Territory of the Pacific to perceptibly greater danger than, say, the people of the United States.

In a dispatch from Admiral Ramsey, the Chief of Naval Operations, dated 5 December 1947, our rights and the responsibilities and obligations of the United States were summarized as follows:

PURSUANT TO ORDERS FROM THE PRESIDENT THE SECRETARY OF DEFENSE HAS DIRECTED SECNAV TO EFFECT THE EVACUATION OF THE NATIVES OF ENIWETOK.

IN RECOMMENDING THIS ACTION THE ATOMIC ENERGY COMMISSION STATED THAT THE INHABITANTS OF THE ATOLL WOULD BE ACCORDED THE NORMAL CONSTITUTIONAL RIGHTS ACCRUING TO U S CITIZENS UNDER THE CONSTITUTION AND TREATED AS WARDS OF THE UNITED STATES; AND THAT ADEQUATE PROVISION WOULD BE MADE FOR THEM IN THEIR NEW LOCATION.

So, the U.S. recognized that we had constitutional rights. That means that we, as the owners of property used by the U.S., were entitled to just and adequate compensation for the use and damage of our land.

In addition, we were promised that we would be taken care of while exiled from Enewetak and that we would be placed in no greater danger than the people of the U.S.

None of these promises were kept by the U.S.: We were not taken care of during our 33 year exile from Enewetak; we were placed in greater danger than people in the U.S. as a result of the test; and we have yet to receive the just and adequate compensation to which we are entitled under the Constitution.

To better understand these unkept promises, we believe that it is useful to review the history of the use of Enewetak by the United States, our experiences as a result that use, the effect of that use on us and our land, and the unfinished obligations of the U.S.

U.S. Use Of Enewetak From 1947 To 1980

The U.S. used Enewetak for a variety of purposes between 1947 and 1980. U.S. use consisted of nuclear weapons testing, intercontinental ballistic missile testing, high energy rocket testing, cratering experiments, the study of marine biology, and radiological remediation and soil rehabilitation efforts.

Nuclear Weapons Testing. The U.S. Department of Energy described the devastating effects of the 43 nuclear tests on Enewetak as follows:

The immense ball of flame, cloud of dark dust, evaporated steel tower, melted sand for a thousand feet, 10 million tons of water rising out of the lagoon, waves subsiding from a height of eighty feet to seven feet in three miles were all repeated, in various degrees, 43 times on Enewetak Atoll.

About 8% of the land mass of the atoll was vaporized, numerous nuclear bomb craters dotted the land mass, and much soil and most vegetation was either removed or severely disturbed. In addition to such physical damage, the testing left most of the atoll contaminated by radiation.

Intercontinental Ballistic Missile Testing. During the 1960's, Enewetak was the target and impact area for tests of Intercontinental Ballistic Missiles fired from Vandenberg Air Force Base in California.

High Energy Upper Stage (HEUS) Rocket Tests. In 1968 and 1978, two test firings of a developmental HEUS rocket motor were conducted on Enjebi Island. The rocket motors tested each contained 2,500 pounds of propellant of which 300 pounds was beryllium. Beryllium is

toxic to man when inhaled and lodged in the lungs. The first test, in April 1968, resulted in an unexpected explosion which scattered propellant, including beryllium, over the western tip of Enjebi. The second test in January 1970 fired successfully scorching the land but did not result in an explosion.

Pacific Cratering Experiments. This program occurred in the 1970's and involved the detonation of charges of high explosives to provide a means of predicting the impact of nuclear detonations upon strategic defense installations. This resulted in twelve detonations of 1,000 pound charges, drilling of over 190 holes into various islands of the atoll from 200 feet to 300 feet in depth, movement of 185,000 cubic yards of soil, and the digging of 86 trenches on various islands each 7 feet deep.

Marine Biology Research Laboratory. The laboratory began operations in 1954 under the auspices of the Division of Biology and Medicine of the U.S. Atomic Energy Commission. Research supported by the laboratory was chosen by an advisory committee which evaluated written proposals concerning a broad spectrum of marine and terrestrial science. This activity continued into the early 1980's.

Radiological Remediation and Resettlement Activities. The United States undertook a radiological remediation and resettlement program that took place from 1977 to 1980. Unfortunately, this effort left half the atoll contaminated, left the habitable parts without vegetation or topsoil, prevented the Enjebi island members of our community from resettling on their land in the northern part of the atoll, left the lagoon contaminated with plutonium, left a concrete waste storage site filled with contaminants radioactive for thousands of years, and left the heavily contaminated island of Runit without any radiological remediation whatsoever.

While this use of Enewetak was going on, we lived on Ujelang Atoll.

Removal To Ujelang Atoll

A few days before Christmas in 1947, the U.S. removed us from Enewetak to the much smaller, resource poor, and isolated atoll of Ujelang. We were told by the U.S. that our removal would be for a short time. In fact, Captain John P. W. Vest, the U.S. Military Governor for the Marshall Islands told us that our removal from Enewetak would be temporary and last no more than three to five years. Unfortunately, we were exiled on Ujelang for a period of over thirty-three years.

Hardship On Ujelang

The exile on Ujelang was particularly difficult for us leading to hopelessness and despair. During the 33 year exile on Ujelang we endured the suffering of near starvation. We tried to provide food for ourselves and our children, but one meal a day and constant hunger was the norm. Malnutrition caused illness and disease. Children and the elderly were particularly vulnerable. Health care was woefully inadequate. In addition, our children went largely uneducated in the struggle for survival. We became so desperate that in the late 1960's we took over a visiting government field-trip ship, demanding that we be taken off of Ujelang and returned to Enewetak.

Our suffering and hardship while on Ujelang was eventually acknowledged by the U.S. The U.S. Department of Interior in a letter to the President of the U.S. Senate, dated January 14, 1978, said, in relevant part:

The people of Enewetak Atoll were removed from their home atoll in 1947 by the U.S. Government in order that their atoll could be used in the atomic testing program. The people were promised that they would be able to return home once the U.S. Government no longer had need for their islands.

During the thirty years that the Enewetak people have been displaced from their home atoll they have suffered grave privations, including periods of near starvation, in their temporary home on Ujelang Atoll. The people have cooperated willingly with the U.S. Government and have made many sacrifices to permit the United States to use their home islands for atomic testing purposes.

The physical difficulties experienced on Ujelang were made more difficult by the loss of our ancestral homeland. We have close ties to our land. These close ties were forged by centuries of making a life on our land. Our ancestors worked the soil and nurtured the plants. We buried our dead on our land. We feel that we are a part of the land and it is a part of us. Our connection with our land is spiritual in nature. It is of great meaning because it was the one place in the world given to us by God. And this was taken away from us causing us to live lives of hardship, neglect, and isolation on Ujelang. It is no surprise that after years of hardship, neglect and isolation we became increasingly insistent that we be returned home. Eventually, the U.S. said it would attempt to make our homeland habitable.

Initial Cleanup Attempt Of Enewetak Atoll

In 1972, the U.S. said that it would soon no longer require the use of Enewetak. The U.S. recognized that the extensive damage and residual radiation at Enewetak would require radiological cleanup, soil rehabilitation, housing and basic infrastructure before we could resettle Enewetak. An extensive cleanup, rehabilitation and resettlement effort was undertaken between 1977 and 1980.

Unfortunately, the cleanup left over half of the land mass of the atoll contaminated by radiation confining us to the southern half of the atoll. This has prevented the Enjebi island members of our community from resettling their home island, and has prevented us from making full and unrestricted use of our atoll. In addition, the cleanup and rehabilitation was not effective in rehabilitating the soil and revegetating the islands. An extensive soil rehabilitation and revegetation effort is still required to permit the growing of food crops. The cleanup also left us with a radioactive waste site on the island of Runit. Over 110,000 cubic yards of radioactive waste, which consist of radiation contaminated dirt scrapped off the islands, are stored in a nuclear test-created crater on Runit Island.

Enewetak Claims In The U.S. Claims Court

When we resettled on the southern half of our atoll, we recognized then, for the first time, that the land required further restoration (radiological remediation, soil rehabilitation, and revegetation), that the Enjebi island members of the Enewetak community needed to be resettled on their home island, and that we were never adequately compensated for the loss of use of our land and the hardships we endured during our exile. To accomplish restoration, resettlement of the northern islands, and to be justly compensated for the 33 years we were denied use of our land, we filed an action against the U.S. for damages in the U.S. Claims Court in 1982.

In addition to the Enewetak lawsuit, thirteen other lawsuits were filed in the U.S. Claims Court by our fellow Marshall Islanders seeking compensation from the U.S. for damages as a result of the nuclear testing program.

U.S. Accepts Responsibility For Damages Resulting From The Nuclear Testing Program In The Compact Of Free Association

While these lawsuits were pending, the Compact of Free Association went into effect. In Section 177 of the Compact, the U.S. confirmed its constitutional obligations, first described in President Truman's 1947 directive, when it accepted responsibility for compensation owing to Marshall Islanders for loss or damage to property and person resulting from the nuclear testing program.

After the Compact of Free Association went into effect, the U.S. moved to dismiss our claims. We opposed dismissal on several grounds, most notably on the ground that the compensation provided under the Compact was inadequate and did not constitute just compensation under the Constitution. In 1987, the Claims Court dismissed these cases holding that it lacked subject matter jurisdiction over these claims because the consent of the U.S. to be sued on those claims had been withdrawn in conjunction with the establishment of a Marshall Islands Nuclear Claims Tribunal to provide just compensation. The Claims Court recognized that the adequacy of the amount provided to Marshall Islanders under the Compact was to be determined by the Nuclear Claims Tribunal.

Enewetak Claims In The Nuclear Claims Tribunal

After our claims were dismissed by the U.S. courts, the only forum available to hear our claims was the Nuclear Claims Tribunal. Our claims before the Tribunal were for the loss of use of our land, for the costs to restore our land to a condition of full and unrestricted use, and for the hardship and suffering we endured while in exile on Ujelang. In 2000, the Tribunal, following well established U.S. constitutional, legal, and regulatory principles, determined that the compensation to be provided to us was an amount of \$386 million after deducting all compensation received by us from the U.S.

However, the Tribunal's Compact funding was limited to \$45 million to pay personal injury and property damage awards. Due to the inadequate funding of the Tribunal, the Tribunal has been able to pay out a total of only \$1.6 million on our Tribunal award — or less the 4/10 of one percent of the actual award. Now, in 2010, the Tribunal's funding has been exhausted and our award remains unpaid.

Changed Circumstances Petition

In September 2000, the Marshall Islands government filed a petition with the U.S. Congress, requesting additional funds to cover unpaid Tribunal awards due to "Changed Circumstances" pursuant to Article IX of the Section 177 Agreement. To date, Congress has not acted on the petition, although a January 24, 2005 State Department letter advised Congress that the petition should be denied.

Claims Before The Court Of Federal Claims

After six years of effort to get our Tribunal award paid by the U.S. proved unsuccessful, we filed an action in the U.S. Court of Federal Claims seeking damages in the amount \$384 million – the amount awarded to us by the Nuclear Claims Tribunal, less the amount received.

Although the \$384 million award is a significant amount, it is only a fraction of the amount that was expended to create the damage at Enewetak. It is also a fraction of the amount necessary to cleanup sites in the U.S. contaminated as a result of the nuclear weapons testing program. The U.S. DOE has revised its cleanup estimates upwards to \$168 billion to \$212 billion for the cleanup of U.S. sites contaminated as a result of the nuclear weapons testing program.

It is also noteworthy that a few years ago the U.S. Congress appropriated over \$400 million for the cleanup of Kahoolawe Island, yet that site is affected by material that is non-nuclear and non-toxic.

Dismissal Of Our Claims Because Congress Withdrew U.S. Courts' Jurisdiction

Our action and the action of the Bikini people in the U.S. Court of Federal Claims filed in 2006 were dismissed. We, and the Bikini people, appealed the dismissal. In affirming the dismissal the U.S. Court of Appeals for the Federal Circuit concluded that U.S. courts had no power to hear the claims of the Bikini and Enewetak people because Congress, in the 177 Agreement, withdrew the jurisdiction of U.S. courts to hear such claims. In addition, the court concluded that the remedy for the claims of the Bikini and Enewetak people essentially lies with Congress. See, *People of Bikini v. United States*, No. 2007-5175 (Fed. Cir.), *Ismael John et al. v. United States*, No. 2007-5176 (Fed. Cir.), 554 F.3d 996, 1001 (Fed. Cir. 2009).

What Congress Can Do

The citizens of the U.S. benefited greatly by having the nuclear testing conducted at Enewetak Atoll far from the U.S. mainland thereby avoiding the damaging health and environmental consequences of radioactive fallout. Enewetak's land, lagoon and reef were sacrificed for the benefit of the people of the United States. We bore, and continue to bear, the burden of a damaged and radiation-contaminated homeland. We also endured suffering and hardship the consequences of which continue to affect our community to this day. The U.S. accepted responsibility for the damages it caused at Enewetak, and it agreed that the Tribunal was to determine just compensation. It has done so. Now the claims and the award must be addressed and that is precisely what Congress can do. As the U.S. courts have stated, the remedy with regard to the claims of the Enewetak people lies with Congress.

We believe that the best way for Congress to address the claims of the Enewetak people is to have the matter referred to the United States Court of Federal Claims pursuant to the congressional referral process. That process will enable a body familiar with the type of claims examined and addressed by the Tribunal to again examine those claims, and the resulting awards, and provide a recommendation to Congress regarding disposition of the claims.

I want to emphasize that we remain a friend of the United States. In fact, my son, as many other Marshallese, is a member of the US military and a veteran of action in Iraq and Afghanistan. We fight side by side with Americans for values dear to us all. One of those values is to provide adequate compensation when government damages and uses private property. This is not a novel idea. It is enshrined in the Constitution and is based on centuries old legal principles that apply to government and private parties alike. For example, the US is insisting that people be fully compensated for the damage done by the oil spill in the Gulf of Mexico. Similarly, we insist that we be fully compensated for the damage done to our atoll and to our people by the nuclear testing program. We need your help to right this wrong – a wrong that has gone on for much too long.

Mr. Chairman we look forward to working with you to address how best to right this decades long wrong.

Other Issues That Relate To Our Ability To Live On Enewetak

Although resolution of our nuclear damage claims is the issue most important to us, there are other issues that affect our ability to live on Enewetak. These include, funding of a health program; radiation monitoring of our people, our environment, and the U.S created nuclear waste site at Runit Island; and, increased funding of the Enewetak Food and Agriculture Program.

Funding of the Health Care Program

In Section 102 of Public Law 96-205, the Congress authorized a program of medical care and treatment for the peoples of the atolls of Bikini, Enewetak, Rongelap, Utrik and other Marshallese determined to be affected as a result of the U.S. Nuclear Testing Program in the Marshall Islands. The funding for such program continued, in an amount of \$2 million annually for 15 years, under the terms of the Compact. The 15 year funding for such medical care and treatment program expired as of October 21, 2001, although the program has been funded at a much reduced level since then and is only funded on a year-by-year basis.

Long term funding is necessary to continue the program. We appreciate the funding for such program provided by the Congress in the amount of \$1 million for FY 2010. However, continued funding in an amount of at least several million dollars per year is required to maintain the key elements of the program which provide for an on-site physician for each of the four atolls, necessary medicines and supplies, funding for a health aide for each atoll, and funding for care of the people of the four atolls at the hospitals in the Marshall Islands when required.

Radiation Monitoring of the People, the Environment, and Runit Island

Because of the residual radiation contamination at Enewetak Atoll, we and our environment need to be monitored. We have reached an agreement with the U.S. Department of Energy (DOE) on an appropriate whole body counting and plutonium detection regime for our people. The DOE's responsibilities under such a regime need to continue until Enewetak is radiologically remediated. In addition, the Runit Dome (Cactus Crater Containment Site) contains over 110,000 cubic yards of material including plutonium and other radioactive debris. This site needs to be monitored to assure the integrity of the structure and to assure that no health risks from the radioactive waste site are suffered by us. To effect the foregoing, a long-term stewardship program of the Runit Dome and the remainder of Runit Island needs to be implemented by the U.S.

Increased funding of the Enewetak Food and Agriculture Program

This program is necessary because over one-half of Enewetak remains contaminated by radiation. The remaining fifty percent of the land was turned into a desert-like wasteland in the course of the nuclear testing program. As a result of such activities, there is insufficient food and other resources on Enewetak atoll to support the people.

Congress has provided a sum of not less than \$1.3 million annually for 20 years for the Enewetak Food and Agriculture Program in the Compact. The Enewetak people greatly appreciate such mandatory funding. Congress has found it appropriate to provide the program with an additional \$500,000 per year and such additional sum has been provided for several years. Consequently, the total program funding for FY 2010 is approximately \$1.95 million and

such funding level needs to continue to maintain the minimum components of the program. The components of the program include a soil and agriculture rehabilitation program, the importation of food, and the operation of a vessel. Much progress has occurred over the past several years with regard to the agriculture rehabilitation effort. In addition, we have become more and more involved with the soil rehabilitation effort and the planting and maintenance of food bearing plants. Funding of the program with the additional \$500,000 these past several years has helped the program keep up with inflation and has created a momentum that we would like to maintain. Therefore, we ask that the Congress continue annual funding of the program as provided in the Compact plus the additional \$500,000 per year necessary to maintain the minimum components of the program.

Conclusion

We thank this subcommittee for the opportunity to express our concerns relating to the Compact, the nuclear testing program that occurred on our homeland, the resolution of our nuclear damage claims, and for the opportunity to describe the challenges we face as the only population ever resettled on a nuclear test site.